

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANA GUNN

Claimant

VS.

JOSTENS PRINTING & PUBLISHING

Respondent

AND

CONSTITUTION STATE SERVICE COMPANY

Insurance Carrier

Docket No. 1,002,604

ORDER

Respondent appeals Administrative Law Judge Brad E. Avery's April 11, 2002, preliminary hearing Order for Medical Treatment.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for medical treatment for claimant's pain in her neck and right shoulder as a result of a traumatic April 26, 2000, accidental injury.

Respondent appeals and contends, if claimant has a current need for medical treatment, the need is not related to her April 26, 2000, work-related accident. Respondent argues that because of the large lapse of time between September 21, 2000, the last time that claimant received medical treatment for the April 26, 2000, injury, and her present request for medical treatment made on January 14, 2002, claimant has failed to prove her current need for medical treatment is related to the April 26, 2000, accident.

Conversely, claimant contends she proved through her testimony that she has been symptomatic since she received her last medical treatment on September 21, 2000. Claimant also points out she reported her continuing symptoms on an earlier occasion to the respondent on July 23, 2001. Accordingly, claimant requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order for Medical Treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

On April 26, 2000, claimant was cleaning rollers on a machine in the bindery department when her hair got caught in the rollers. Claimant's head was jerked into the machine. Her hair was torn from the right side of her scalp and she had pain and discomfort in her neck and right shoulder.

Respondent provided medical treatment for her injury at St. Francis Hospital Emergency Department. Claimant was seen by St. Francis' emergency physicians on May 2, June 14, June 29, and September 21, 2000. Claimant received conservative treatment consisting of medications, ice and heat therapy, physical therapy, and instructions for home exercises. On September 21, 2000, the last time claimant was treated for the April 26, 2000, accident, she was instructed to return as needed.

Claimant testified she continued to have symptoms in the base of her neck and right shoulder after she received her last medical treatment on September 21, 2000. Claimant was asked why she was seeking medical treatment at this time. Claimant answered, "I would like to seek medical care to find out what is actually wrong with my shoulder and why I have not been pain free."¹ Additionally, claimant testified that she had not sustained a new injury to her neck and right shoulder since the April 26, 2000, accident.

On July 23, 2001, claimant reported continuing symptoms to her neck and right shoulder to her supervisor on that date Eric Steinmetz. Claimant again reported neck and right shoulder symptoms to her present supervisor Jim Keeffe on January 14, 2002. At that time, claimant requested medical treatment. Mr. Keeffe then sent claimant to see Angie Smith, respondent's human resources specialist, in regard to the medical treatment request. Ms. Smith also testified at the preliminary hearing. Because claimant was requesting medical treatment for an April 26, 2000, injury, Ms. Smith denied her request and referred claimant to her personal physician.

In January 2002, when claimant requested medical treatment for her ongoing neck and right shoulder symptoms, she also moved from one residence to another. Claimant requested medical treatment on January 14, 2002. Claimant testified she moved residences between January 20 and January 25, 2002. Claimant also testified she did not do any heavy lifting during the move.

The Board finds that the ALJ in granting claimant's request for medical treatment implicitly had to find that claimant was a credible witness. Respondent's contention that claimant's current medical request was somehow related to her moving fails, because she made the medical treatment request before she actually physically made the move. The

¹ Preliminary Hearing transcript, April 9, 2002, p.14.

Board also finds the preliminary hearing record does not prove claimant suffered a separate and new accident. Moreover, an injured worker's own testimony is sufficient to establish the existence, and nature and extent of a worker's injury.²

The Board concludes, at this point in the proceedings, the ALJ's preliminary hearing Order for Medical Treatment should be affirmed.

As provided by the Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing on the claim.³

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Brad E. Avery's April 11, 2002, preliminary hearing Order for Medical Treatment, should be and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

c: John Ostrowski, Attorney for Claimant
John F. Carpinelli, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² See Graff v. Trans World Airlines, 267 Kan. 854, 864, 983 P.2d 258 (1999).

³ See K.S.A. 44-534a(a)(2).